



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Hold Public Hearing to Consider Adopting Urgency Ordinance to Extend Interim Ordinance No. 1867, which established a Moratorium on 1) The Outdoor Cultivation of Medical Marijuana Within the City of Lodi and 2) The Indoor Cultivation of Medical Marijuana that Creates a Public Nuisance

MEETING DATE: December 19, 2012

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Adopt Urgency Ordinance to Extend Interim Ordinance No. 1867, which established a moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance, for a period of 10-months and 15-days.

BACKGROUND INFORMATION: On November 7, 2012 the Council adopted Interim Ordinance No. 1867 establishing a 45-day moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance.

Staff recommends that provisions should be added to the City's Municipal Code that place zoning restrictions on the cultivation of medical marijuana within the City if that is the desire of the Council. To do so, however, staff from the City Attorney's Office and the Police Department need adequate time to meet with members of the community, including members of the community currently cultivating marijuana for medicinal needs, and to study and analyze the complicated legal and practical issues involved in regulating the cultivation of marijuana for medical use, including a review the City's General Plan and the zoning ordinances, and to make recommendations for the Council's consideration. Unfortunately, the initial 45 days will be inadequate to prepare a comprehensive approach for Council consideration.

Government Code Section 65858 provides that the Council, may, after notice to the public pursuant to Government Code Section 65090 and a public hearing, extend Interim Ordinance No. 1867 for a period of 10 months and 15 days. The extension requires a minimum four-fifths (4/5) vote to be adopted. (An additional one-year extension is permissible under Section 65858(a)).

As proposed, the recommended extension of Interim Ordinance No. 1867 would extend the current 45-day moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance to November 6, 2013. Without the proposed extension, Interim Ordinance 1867 will be of no further force and effect after December 22, 2012.

FUNDING: None.

Janice D. Magdich
Deputy City Attorney

cc: Mark Helms, Police Chief

Attachments: Proposed Urgency Ordinance to Extend Interim Ordinance No. 1867

APPROVED:

Konradt Bartlam, City Manager

ORDINANCE NO. 1868

AN UNCODIFIED INTERIM URGENCY ORDINANCE OF
THE CITY COUNCIL OF THE CITY OF LODI IMPOSING A
MORATORIUM ON 1) THE OUTDOOR CULTIVATION OF
MEDICAL MARIJUANA WITHIN THE CITY OF LODI AND 2) THE
INDOOR CULTIVATION OF MEDICAL MARIJUANA THAT
CREATES A PUBLIC NUISANCE

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WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code section 11362.5, *et seq.* and entitled the Compassionate Use Act of 1996 ("the Act"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 (Medical Marijuana Program Act) became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with SB 420; and

WHEREAS, under the federal Controlled Substances Act (21 U.S.C. §841), marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use; and

WHEREAS, Government Code section 65858 authorizes cities to adopt moratoriums on land use entitlements in order to study any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal; and

WHEREAS, Government Code sections 65850(a) and 65850(c)(4), provide the authority of the City of Lodi to regulate by ordinance the uses of land and the intensity of land use; and

WHEREAS, the City of Lodi Police Department and residents of the City of Lodi have reported adverse impacts from the outdoor cultivation of medical marijuana within the City of Lodi, including offensive odors detectable beyond the property boundaries, increased risk of trespassing, violent crime, burglary, and theft; and

WHEREAS, the strong odor of marijuana plants, which increases in intensity as the plants mature, is highly offensive to many individuals and creates an attractive nuisance, alerting people to the presence and location of marijuana plants, creating an increased risk of burglary, robbery, or armed robbery because of the monetary value of the plants; and

WHEREAS, the presence of marijuana plants is an attractive nuisance to minors, creating a potential hazard in areas frequented by minors, such as schools, parks, recreation centers, and similar facilities; and

WHEREAS, the cultivation of medical marijuana raise issues of first impression for the City, which currently does not address or regulate in any manner the cultivation of medical marijuana in its Municipal Code; and

WHEREAS, there is not sufficient time for the City of Lodi to adopt a regular, non-urgency ordinance regulating the outdoor and indoor cultivation of medical marijuana; and

WHEREAS, it is the intention of the City Council of the City of Lodi that nothing in this Ordinance be deemed to conflict with the federal Controlled Substances Act (21 U.S.C. §841), by permitting or otherwise allowing any activity which is prohibited under the Act; and

WHEREAS, the City Council of the City of Lodi is aware that the cultivation and possession of marijuana for medical purposes by Qualified Patients and Primary Caregivers as defined under California law (Health & Saf. Code, §§11362.7(f) and 11362.7(d), respectively), it is the intention of the Council that nothing in this Ordinance be construed, in any way, to expand the rights of anyone to cultivate, possess or use marijuana under state law, engage in any public nuisance, violate the federal Controlled Substance Act, or engage in any activity regarding the cultivation, distribution, use or consumption of marijuana that is otherwise prohibited by law; and

WHEREAS, it is the purpose and intent of this Ordinance to ensure that marijuana grown for medical purposes remains secure and does not find its way to persons other than Qualified Patients or Primary Caregivers, or illicit markets; and

WHEREAS, it is the purpose and intent of this Ordinance to assist law enforcement personnel to perform their duties effectively and in accordance with California law; and

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Government Code section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated General Plan adoption and zoning ordinance review; and

WHEREAS, for the protection of the public's health, safety, and general welfare, the City Council on November 7, 2012, adopted Ordinance No. 1867, an Uncodified interim Urgency Ordinance of the City Council of the City of Lodi, making findings and imposing a forty-five (45) day moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance; and

WHEREAS, the City desires to extend Ordinance No. 1867 for a period of ten (10) months and fifteen (15) days, as permitted by Government Code section 65858, to maintain the current status quo and to provide time for the City meet with members of the public, and to study and analyze the complicated legal and practical issues involved in regulating the cultivation of marijuana for medical use, including a review of the City's General Plan and zoning ordinances, and to make recommendations for consideration by the City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. The City Council finds that in accordance with the terms and provisions of Section 65858 of the Government Code, the following notice given in the time and manner required by law, it held a public hearing on the extension of Ordinance No. 1867 on December 19, 2012. After hearing all applicable evidence, the City Council finds that the conditions and findings cited in Ordinance No. 1867 continue to exist and that further study by City staff, including meeting with members of the public, is necessary in order to study and analyze the complicated legal and practical issues involved in regulating the cultivation of marijuana for medical use, including a review of the City's General Plan and zoning ordinances, and to adopt regulatory standards and conditions to be imposed on the outdoor and indoor cultivation of medical marijuana.

Section 2. Imposition of Moratorium.

A. In accordance with Government Code section 65858, from and after the date of the expiration of Ordinance No. 1867, the outdoor cultivation of marijuana, for any purpose, within the incorporated area of the City of Lodi is hereby prohibited period of ten (10) months and fifteen (15) days. Further, in accordance with Government Code section 65858, from and after the date of the expiration of Ordinance No. 1867, any indoor cultivation of medical marijuana by a Qualified Patient or Primary Caregiver within the incorporated area of the City of Lodi that creates a public nuisance resulting from the visibility of marijuana from the public right-of-way or the odor of marijuana beyond the property line of the property where the indoor cultivation is taking place is prohibited for a period of ten (10) months and fifteen (15) days.

B. Any property found to be in violation of this Ordinance shall be declared to be a public nuisance and may be summarily abated by the City of Lodi pursuant to Civil Code Section 731. Nothing in this Ordinance shall be deemed to prevent the city attorney from bringing a civil action for injunctive relief and civil penalties pursuant to Lodi Municipal Code Chapter 1.10. In any civil action brought under Chapter 1.10, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

C. For purposes of this Ordinance, the terms "Primary Caregiver," "Qualified Patient" shall have the same meaning as that set forth in Health and Safety Code Sections 11362.7(f) and 11362.7(d), respectively.

D. This Ordinance is an interim urgency ordinance adopted pursuant to the authority granted to the City of Lodi by Government Code section 65858 and is for the immediate preservation of the public health, safety, and welfare. The City Council of the City of Lodi hereby finds and declares that there is a need to enact an urgency interim ordinance establishing a moratorium banning the outdoor cultivation of medical marijuana within the City of Lodi and the indoor cultivation of medical marijuana by a Qualified Patient or Primary Caregiver within the City of Lodi that creates a public nuisance resulting from the visibility of marijuana from the public right-of-way or the odor of marijuana beyond the property line of the property where indoor cultivation is taking place, based upon the findings set forth hereinabove and incorporated herein.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council of the City of Lodi hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

Section 4. No Mandatory Duty of Care. This Ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

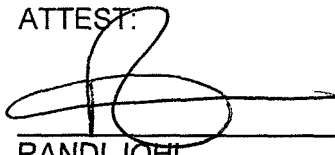
Section 5. Conflict. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 6. Effective Date. This urgency Ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect immediately upon passage and approval by at least four-fifths vote of the City Council and the expiration of Ordinance No. 1867 (December 22, 2012), and shall be in effect for a period of ten (10) months and fifteen (15) days (November 6, 2013), unless repealed or extended by the City Council as provided for in Government Code section 65858.

Approved this 19th day of December, 2012



ALAN NAKANISHI
Mayor

ATTEST:


RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1868 was adopted as an urgency ordinance at a regular meeting of the City Council of the City of Lodi held December 19, 2012, and was thereafter passed, adopted, and ordered to print by the following vote:


AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Mounce,
and Mayor Nakanishi

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None


ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1868 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.



RANDI JOHL, City Clerk

Approved to Form:


JANICE D. MAGDICH
Deputy City Attorney

Randi Johl

From: Randi Johl
Sent: Thursday, December 20, 2012 04:27 PM
To: City Council
cc: Rad Bartlam; Steve Schwabauer; Janice Magdich; Jennifer Robison
Subject: 12/19/12 Meeting - Item No. G-2

Attachments: G-2RaichInfo.pdf

Attached please find a copy of the information provided by Angel Raich at last night's Council meeting in regards to Item No. G-2 (Urgency Ordinance - Medical Marijuana). The information was made a part of the record accordingly.

Randi Johl, JD, MMC

City Clerk, City of Lodi

Legislative Director, California City Clerks Association

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Lodi, California 95240

*(209) 333-6702 **Telephone***

*(209) 333-6807 **Facsimile***

12/20/2012



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: 
David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States
Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our *efforts to prosecute significant marijuana traffickers*: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

Subject: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Subject: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

Lanny A. Breuer
Assistant Attorney General
Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Acting Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

AMENDED IN SENATE JULY 5, 2011

AMENDED IN SENATE JUNE 14, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE — 2011 — 12 REGULAR SESSION

ASSEMBLY BILL

No. 420

Introduced by Assembly Member Davis
(Coauthors: Assembly Members Carter and Mitchell)
(Coauthors: Senators Price and Wright)

February 14, 2011

An act to add Section 21003 to the Elections Code, relating to redistricting.

LEGISLATIVE COUNSEL'S DIGEST

AB 420, as amended, Davis. Redistricting.

Existing law, as added by constitutional initiative, establishes the Citizens Redistricting Commission, and charges it with various duties and responsibilities in connection with redistricting Assembly, Senate, Board of Equalization, and congressional districts, as specified. Existing law establishes the Department of Corrections and Rehabilitation, and charges it with various duties and responsibilities in connection with the incarceration and rehabilitation of prisoners, as specified.

This bill would require the Department of Corrections and Rehabilitation to furnish to the Citizens Redistricting Commission, *by not sooner than April 1, 2020, and not later than July 1, 2020*, specified information regarding the last known place of residence, as defined, of each inmate incarcerated in a state adult correctional facility, except an

inmate whose last known place of residence is outside of California. The bill also would request the Citizens Redistricting Commission to deem each incarcerated person as residing at his or her last known place of residence, rather than at the institution of his or her incarceration, and to utilize the above information in carrying out its redistricting responsibilities.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21003 is added to the Elections Code, to
2 read:

3 21003. (a) (1) ~~Not later~~ *sooner* than April 1, 2020, and *not*
4 *later than July 1, 2020*, the Department of Corrections and
5 Rehabilitation shall furnish to the Citizens Redistricting
6 Commission information regarding the last known place of
7 residence of each inmate incarcerated in a state adult correctional
8 facility, except an inmate whose last known place of residence is
9 outside of California.

10 (2) The information furnished by the Department of Corrections
11 and Rehabilitation pursuant to paragraph (1) shall include, for each
12 inmate, a unique identifier, other than the inmate's name or
13 Department of Corrections and Rehabilitation number, and last
14 known address information that is sufficiently specific to determine
15 the congressional, State Senatorial, State Assembly, or State Board
16 of Equalization district in which the inmate's last known place of
17 residence is located. This information may include, but not be
18 limited to, ZIP Code information or street address information
19 from which a ZIP Code can be derived.

20 (3) For purposes of this subdivision, "inmate incarcerated in a
21 state adult correctional facility" includes an inmate who, as of
22 April 1, 2020, has been transferred to a facility outside of California
23 to complete his or her term of incarceration.

24 (b) Consistent with Section 2025, the Legislature hereby requests
25 the Citizens Redistricting Commission to deem each incarcerated
26 person as residing at his or her last known place of residence, rather
27 than at the institution of his or her incarceration, and to utilize the
28 information furnished to it pursuant to subdivision (a) in carrying

1 out its redistricting responsibilities under Article XXI of the
2 California Constitution.

3 (c) For purposes of this section, “last known place of residence”
4 means the address at which the inmate was last domiciled prior to
5 his or her current term of incarceration, as determined from the
6 court records of the county in which the inmate was sentenced to
7 his or her current term of incarceration.

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COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 847
AUTHOR : Correa
TOPIC : Medical Marijuana Program: zoning restrictions: residential use.

TYPE OF BILL :
Active
Non-Urgency
Non-Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2011

Sept. 21 In Senate. Consideration of Governor's veto pending.
Sept. 20 Vetoed by the Governor.
Sept. 7 Enrolled and presented to the Governor at 4:30 p.m.
Aug. 30 Assembly amendments concurred in. (Ayes 34. Noes 4. Page 2152.)
Ordered to engrossing and enrolling.
Aug. 25 In Senate. Concurrence in Assembly amendments pending.
Aug. 25 Read third time. Passed. (Ayes 68. Noes 5. Page 2591.) Ordered to
the Senate.
Aug. 24 Read second time. Ordered to third reading.
Aug. 23 Read second time and amended. Ordered to second reading.
Aug. 22 From committee: Do pass as amended. (Ayes 15. Noes 0.) (August
17).
June 30 From committee: Do pass and re-refer to Com. on APPR. (Ayes 6.
Noes 0.) (June 29). Re-referred to Com. on APPR.
June 22 From committee: Do pass and re-refer to Com. on L. GOV. (Ayes 16.
Noes 1.) (June 21). Re-referred to Com. on L. GOV.
June 9 Referred to Coms. on HEALTH and L. GOV.
June 2 In Assembly. Read first time. Held at Desk.
June 1 Read third time. Passed. (Ayes 31. Noes 2. Page 1244.) Ordered to
the Assembly.
May 24 Read second time. Ordered to third reading.
May 23 From committee: Be placed on second reading file pursuant to Senate
Rule 28.8.
May 13 Set for hearing May 23.
May 10 Read second time and amended. Re-referred to Com. on APPR.
(Corrected May 18.)
May 9 From committee: Do pass as amended and re-refer to Com. on APPR.
(Ayes 6. Noes 0. Page 886.) (May 5).
May 3 Set for hearing May 5.
May 2 Re-referred to Com. on PUB. S.
Apr. 27 From committee: Do pass and re-refer to Com. on RLS. (Ayes 6. Noes
0. Page 763.) (April 27). Re-referred to Com. on RLS.
Apr. 25 From committee with author's amendments. Read second time and
amended. Re-referred to Com. on GOV. & F.
Mar. 22 Set for hearing April 27.
Mar. 17 Withdrawn from committee. Re-referred to Coms. on GOV. & F. and
HEALTH.
Mar. 10 Referred to Coms. on HEALTH and GOV. & F.
Feb. 19 From printer. May be acted upon on or after March 21.

Feb. 18 Introduced. Read first time. To Com. on RLS. for assignment. To
print.

BILL NUMBER: AB 2650 CHAPTERED
BILL TEXT

CHAPTER 603

FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2010

APPROVED BY GOVERNOR SEPTEMBER 30, 2010

PASSED THE SENATE AUGUST 11, 2010

PASSED THE ASSEMBLY AUGUST 16, 2010

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 10, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

INTRODUCED BY Assembly Member Buchanan

(Coauthors: Assembly Members Carter, Portantino, Torres, and Torrico)

FEBRUARY 19, 2010

An act to add Section 11362.768 to the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, Buchanan. Medical marijuana.

Existing law added by initiative, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, the qualified patient's primary caregiver, or an individual who provides assistance to the qualified patient or the qualified patient's primary caregiver, who possesses, cultivates, or distributes marijuana for the personal medical purposes of the qualified patient upon the written or oral recommendation or approval of a physician. Existing statutory law requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and establishes procedures under which a qualified patient with an identification card may use marijuana for medical purposes. Existing law regulates qualified patients, a qualified patient's primary caregiver, and individuals who provide assistance to the qualified patient or the qualified patient's primary caregiver, as specified. A violation of these provisions is generally a misdemeanor.

This bill would provide that no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider authorized by law to possess, cultivate, or distribute medical marijuana that has a storefront or mobile retail outlet which ordinarily requires a local business license shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, except as specified. The bill also would provide that local ordinances, adopted prior to January 1, 2011, that regulate the location or

establishment of these medical marijuana establishments would not be preempted by its provisions; and that nothing in the bill shall prohibit a city, county, or city and county from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments. The bill would express a legislative finding and declaration that establishing a uniform standard regulating the proximity of these medical marijuana establishments to schools is a matter of statewide concern and not a municipal affair and that, therefore, all cities and counties, including charter cities and charter counties, shall be subject to the provisions of the bill. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11362.768 is added to the Health and Safety Code, to read:

11362.768. (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which

education is primarily conducted in private homes.

SEC. 2. The Legislature finds and declares that establishing a uniform standard regulating the proximity of medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers to schools is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities and counties, including charter cities and charter counties.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

BILL NUMBER: AB 2650 CHAPTERED
BILL TEXT

CHAPTER 603

FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2010

APPROVED BY GOVERNOR SEPTEMBER 30, 2010

PASSED THE SENATE AUGUST 11, 2010

PASSED THE ASSEMBLY AUGUST 16, 2010

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 10, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

INTRODUCED BY Assembly Member Buchanan
(Coauthors: Assembly Members Carter, Portantino, Torres, and
Torrico)

FEBRUARY 19, 2010

An'act to add Section 11362.768 to the Health and Safety Code,
relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, Buchanan. Medical marijuana.

Existing law added by initiative, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, the qualified patient's primary caregiver, or an individual who provides assistance to the qualified patient or the qualified patient's primary caregiver, who possesses, cultivates, or distributes marijuana for the personal medical purposes of the qualified patient upon the written or oral recommendation or approval of a physician. Existing statutory law requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and establishes procedures under which a qualified patient with an identification card may use marijuana for medical purposes. Existing law regulates qualified patients, a qualified patient's primary caregiver, and individuals who provide assistance to the qualified patient or the qualified patient's primary caregiver, as specified. A violation of these provisions is generally a misdemeanor.

This bill would provide that no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider authorized by law to possess, cultivate, or distribute medical marijuana that has a storefront or mobile retail outlet which ordinarily requires a local business license shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, except as specified. The bill also would provide that local ordinances, adopted prior to January 1, 2011, that regulate the location or

establishment of these medical marijuana establishments would not be preempted by its provisions; and that nothing in the bill shall prohibit a city, county, or city and county from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments. The bill would express a legislative finding and declaration that establishing a uniform standard regulating the proximity of these medical marijuana establishments to schools is a matter of statewide concern and not a municipal affair and that, therefore, all cities and counties, including charter cities and charter counties, shall be subject to the provisions of the bill. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11362.768 is added to the Health and Safety Code, to read:

11362.768. (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which

education is primarily conducted in private homes.

SEC. 2. The Legislature finds and declares that establishing a uniform standard regulating the proximity of medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers to schools is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities and counties, including charter cities and charter counties.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Senate Bill No. 420

CHAPTER 875

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 12, 2003. Filed
with Secretary of State October 12, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 420, Vasconcellos. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program.

This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The bill would require the Attorney General to develop and adopt guidelines to ensure the security and nondiversion of marijuana grown for medical use, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that

reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.

(2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.

(3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.

(4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.

(b) It is the intent of the Legislature, therefore, to do all of the following:

(1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.

(2) Promote uniform and consistent application of the act among the counties within the state.

(3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

(c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.



(d) The Legislature further finds and declares both of the following:

(1) A state identification card program will further the goals outlined in this section.

(2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.

(e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SEC. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

11362.7. For purposes of this article, the following definitions shall apply:

(a) “Attending physician” means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient’s medical record the physician’s assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) “Department” means the State Department of Health Services.

(c) “Person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) “Primary caregiver” means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to



Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) “Qualified patient” means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) “Identification card” means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

(h) “Serious medical condition” means all of the following medical conditions:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.
- (6) Chronic pain.
- (7) Glaucoma.
- (8) Migraine.
- (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
- (10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the

accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than **30** days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.



(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant

to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, Correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.



(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting

to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.



*Please immediately confirm receipt
of this fax by calling 333-6702*

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: PUBLIC HEARING TO EXTEND INTERIM ORDINANCE NO. 1867, AN
UNCODIFIED INTERIM URGENCY ORDINANCE IMPOSING A
MORATORIUM ON 1) THE OUTDOOR CULTIVATION OF MEDICAL
MARIJUANA WITHIN THE CITY OF LODI AND 2) THE INDOOR
CULTIVATION OF MEDICAL MARIJUANA THAT CREATES A PUBLIC
NUISANCE

PUBLISH DATE: SATURDAY, DECEMBER 8, 2012

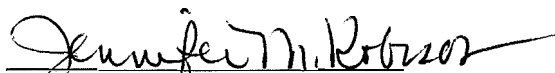
LEGAL AD

TEAR SHEETS WANTED: One (1) please

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
LNS ACCT. #0510052 City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, DECEMBER 6, 2012

ORDERED BY: RANDI JOHL
CITY CLERK


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

LNS Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages)
Phoned to confirm receipt of all pages at _____ (time) _____ MB _____ JMR (Initials)



DECLARATION OF POSTING

PUBLIC HEARING TO EXTEND INTERIM ORDINANCE NO. 1867, AN UNCODIFIED INTERIM URGENCY ORDINANCE IMPOSING A MORATORIUM ON 1) THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA WITHIN THE CITY OF LODI AND 2) THE INDOOR CULTIVATION OF MEDICAL MARIJUANA THAT CREATES A PUBLIC NUISANCE

On Thursday, December 6, 2012, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to extend interim Ordinance No. 1867, an uncodified interim urgency ordinance imposing a moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance (attached and marked as Exhibit A) was posted at the following locations:


Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2012, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA DITMORE
ADMINISTRATIVE CLERK



DECLARATION OF MAILING

PUBLIC HEARING TO EXTEND INTERIM ORDINANCE NO. 1867, AN UNCODIFIED INTERIM URGENCY ORDINANCE IMPOSING A MORATORIUM ON 1) THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA WITHIN THE CITY OF LODI AND 2) THE INDOOR CULTIVATION OF MEDICAL MARIJUANA THAT CREATES A PUBLIC NUISANCE

On December 6, 2012, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing Notice of Public Hearing to extend interim Ordinance No. 1867, an uncodified interim urgency ordinance imposing a moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance, attached hereto Marked Exhibit A. The mailing list for said matter is attached hereto, marked Exhibit B.

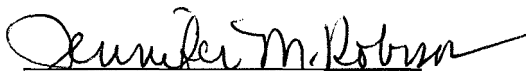
There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2012, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK, CITY OF LODI


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: December 19, 2012

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

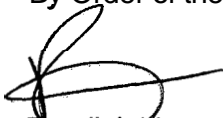
NOTICE IS HEREBY GIVEN that on **Wednesday, December 19, 2012**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following item:

- a) **to extend interim Ordinance No. 1867, an uncodified interim urgency ordinance imposing a moratorium on 1) the outdoor cultivation of medical marijuana within the City of Lodi and 2) the indoor cultivation of medical marijuana that creates a public nuisance.**

Information regarding this item may be obtained in the City Attorney's Office, 221 West Pine Street, Lodi, (209) 333-6701. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

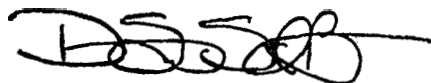
If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:


Randi Johl
City Clerk

Dated: December 5, 2012

Approved as to form:



D. Stephen Schwabauer
City Attorney

**Public Hearing to Extend Interim Ordinance No. 1867, an Uncodified Interim
Urgency Ordinance Imposing a Moratorium on 1) the Outdoor Cultivation of
Medical Marijuana within the City of Lodi and 2) the Indoor Cultivation of
Medical Marijuana that Creates a Public Nuisance**

MAILING LIST

Robin Rushing
1390 W. Lockeford St.
Lodi, CA 95242

Wilma Bianchi
317 Finch Run
Lodi, CA 95240

Joshua Dougherty
311 Finch Run
Lodi, CA 95240